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RUTHWELL, FISH, ERNST & KURZ
1700 K STREET, N.W.
WASHINGTON, DC 20006

JORDAN, JR EXAMINER

ABSTRACT PAPER NO.

03/12/92

DATE MAILED:

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

This application has been examined Responsive to communication filed on 12/23/91 This action is made.
A shortened statutory period for response to this action is set to expire 3 month(s), 0 days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I : THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

1. Notice of References Cited by Examiner, PTO-892.
2. Notice re Patent Drawing, PTO-948.
3. Notice of Art Cited by Applicant, PTO-1449.
4. Notice of Informal Patent Application, Form PTC
5. Information on How to Effect Drawing Changes, PTO-1474.
6.

Part II . SUMMARY OF ACTION

1. Claims 1-66 are pending in this application.
2. Claims _____ are withdrawn from consideration.
3. Claims _____ have been canceled.
4. Claims 1-66 are allowed.
5. Claims _____ are rejected.
6. Claims _____ are objected to.
7. This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. Formal drawings are required in response to this Office action.
9. The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are acceptable; not acceptable (see explanation or Notice re Patent Drawing, PTO-948).
10. The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been approved by the examiner; disapproved by the examiner (see explanation).
11. The proposed drawing correction, filed _____, has been approved; disapproved (see explanation).
12. Acknowledgement is made of the claim for priority under U.S.C. 119. The certified copy has been received not been received; been filed in parent application, serial no. _____, filed on _____.
13. Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. Other

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Claims 1-66 are remaining in this application.

The Request for Reconsideration received on December 23, 1991 has been noted.

The following is a quotation of 35 U.S.C. § 103 which forms the basis for all obviousness rejections set forth in this Office action:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Subject matter developed by another person, which qualifies as prior art only under subsection (f) or (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the invention was made, owned by the same person or subject to an obligation of assignment to the same person.

Claims 1-66 are rejected under 35 U.S.C. § 103 as being unpatentable over Clandinin et al. (AA) in view of Traitler et al. (AI).

The claims appear to be drawn to processes and compositions for diet supplements containing long chain polyunsaturated fatty acids. Clandinin et al. disclose an infant supplement containing arachidonic acid, docosahexaenoic acid, and eicosapentaneoic acid obtained from various vegetable oils. (see column 2, line 61-

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column 3, line 8 and column 6, line 8 - column 7, line 17). The claimed subject matter differs from the disclosure of the above primary reference in claiming the addition of gamma linolenic acid to the supplement. To add gamma linolenic acid to an infant nutritional supplement would have been obvious in view of Traitler et al. which teach the use of gamma linolenic acid in infant milk formula (see column 3, lines 21-61). The choice of specific oils is deemed to be a matter of obvious alternative, absent evidence to the contrary, since the fatty acids contained therein are chemically the same. The claimed subject matter fails to patentably distinguish over the state of the art as represented by the cited references. The applicants' remarks regarding the source of oils have been considered but are found to be unpersuasive since the active fatty acid substances are not seen to chemically differ from the fatty acids of non-microbial sources. Nothing unexpected has been shown by the use of microbial oils.

The applicants remarks have been considered but are not persuasive. Applicants have argued that their process of supplementation and resulting composition is unobvious because the source of the oils are microbes. However, applicants have shown nothing unexpected by using microbial oils rather than fish

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or vegetable oils. As mentioned supra the substances of the claims (PUFA's) are not seen to chemically differ from the PUFA's from other sources. The basis for asserting that the PUFA's do not differ chemically comes from the fact that the substances have the same chemical name (e.g. arachidonic acid, eicosapentaneoic acid, etc.) whereby chemists can identify the structure a substance by its chemical or common name.

No claims are allowed.

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 C.F.R. § 1.136(a).

A SHORTENED STATUTORY PERIOD FOR RESPONSE TO THIS FINAL ACTION IS SET TO EXPIRE THREE MONTHS FROM THE DATE OF THIS ACTION. IN THE EVENT A FIRST RESPONSE IS FILED WITHIN TWO MONTHS OF THE MAILING DATE OF THIS FINAL ACTION AND THE ADVISORY ACTION IS NOT MAILED UNTIL AFTER THE END OF THE THREE-MONTH SHORTENED STATUTORY PERIOD, THEN THE SHORTENED STATUTORY PERIOD WILL EXPIRE ON THE DATE THE ADVISORY ACTION IS MAILED, AND ANY EXTENSION FEE PURSUANT TO 37 C.F.R. § 1.136(a) WILL BE CALCULATED FROM THE MAILING DATE OF THE ADVISORY ACTION. IN NO EVENT WILL THE STATUTORY PERIOD FOR RESPONSE EXPIRE LATER THAN SIX MONTHS FROM THE DATE OF THIS FINAL ACTION.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kimberly Jordan whose telephone number is (703) 308-4611.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-1235.

Frederick E. Waddell
Supervisory Patent Examiner
Group 120

JORDAN:mp
March 10, 1992